

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CENTRAL DIVISION

DONALD CRAIG,

Plaintiff,

vs.

RICK BRETHAUER, JERRY BURT,
MARY DICK,

Defendants.

No. C05-3038-DEO

INITIAL REVIEW ORDER

This matter is before the Court pursuant to the plaintiff's application to proceed in forma pauperis. The Clerk of Court filed such application on June 23, 2005. Along with his application to proceed in forma pauperis, the plaintiff submitted a complaint. On July 28, 2005, the plaintiff filed a motion to amend his complaint. On August 31, 2005, the plaintiff supplemented his complaint by submitting an exhibit. On September 12, 2005, the plaintiff filed another motion to amend his complaint.

With respect to the plaintiff's application to proceed in forma pauperis, the plaintiff did not sign it. See Fed. R. Civ. P. 11 (regarding signing of pleadings); L.R. 11.1 (same). Nonetheless, the Court deems it appropriate to rule on the plaintiff's application. Based on the unsigned application

with certificate of inmate account, in forma pauperis status is granted. 28 U.S.C. § 1915. The Clerk of Court is directed to file the complaint without the prepayment of the filing fee. The plaintiff is directed to submit \$3.99 as his initial partial filing fee. 28 U.S.C. § 1915(b)(1). In addition, the plaintiff is directed to submit monthly payments of 20 percent of the preceding month's income credited to his inmate account until the \$250.00 filing fee is paid. 28 U.S.C. § 1915(b)(2). See also 28 U.S.C. § 1914(a) (requiring \$250.00 filing fee). The agency having custody of the plaintiff is directed to forward payments from his inmate account to the Clerk of Court each time the amount in the account exceeds \$10 until the filing fee is paid. 28 U.S.C. § 1915(b)(2).

Currently confined at the Fort Dodge Correctional Facility in Fort Dodge, Iowa, the plaintiff, proceeding pro se, submitted a complaint under 42 U.S.C. § 1983 to redress the alleged deprivation of his constitutional rights. Jurisdiction is predicated on 28 U.S.C. § 1333(a)(3). Under 28 U.S.C. § 1331(b), venue appears proper as the defendants are located in this district and the events occurred in this district.

In his complaint, the plaintiff appears to assert an equal protection claim. Specifically, the plaintiff states:

Plaintiff is 47 years old, has one (1) year left to finish his 8 year sentence and has been confined at the Fort Dodge Correctional Facility (FDCF) since 5/18/2004 and during this time at FDCF has attempted to enroll in the free college classes that are offered every semester from a local community college (see plaintiff's exhibit). Plaintiff meets all the requirements with the exception that he is not twenty-five (25) years of age or younger. Plaintiff is being denied enrollment into these free college courses due to his age and he cannot afford to pay for these college courses because he is a poor person. Because I am poor and over the set age limits denies him the equal opportunity to get a better job, earn higher wages, live a better lifestyle and personal growth, the defendants' actions are age discrimination & deliberate indifference.

The plaintiff included with his complaint an exhibit which describes college and vo-tech opportunities. For the alleged deprivation of his constitutional rights, the plaintiff seeks:

compensatory damages, boots, tuition, enrollment fees, punitive damages, attorney fees, interest at the maximum legal rate, court costs and any further relief the court deems equitable and just.

With respect to his first motion to amend his complaint, the plaintiff provides information regarding a particular

institutional policy. According to the plaintiff, such policy provides that "'all offenders will be given equal opportunity to participate in all institutional assignments and programs regardless of race, religion, nationality, gender, political belief, age, physical or mental disability.'" The plaintiff's first motion to amend is **granted**.

Concerning the plaintiff's second motion to amend, the plaintiff reasserts claims which were included in his original complaint. The plaintiff's second motion to amend is **granted**.

The Court is unable to determine as a matter of law whether the plaintiff's amended complaint is frivolous within the meaning of 28 U.S.C. § 1915A. Consequently, the Court is of the opinion that the matter is best addressed after receipt of an answer and any dispositive motion deemed appropriate. *Neitzke v. Williams*, 490 U.S. 319, 325, 109 S. Ct. 1827, 1831, 104 L. Ed. 2d 338 (1989); *Money v. Moore*, 877 F.2d 9, 10 (8th Cir. 1989). The Clerk of Court is directed to serve the amended complaint on the defendants and to mail a copy of the amended complaint to the Iowa Attorney General without the prepayment of fees and costs. A copy of this Order is to accompany the documents being served. The Iowa Attorney

General is directed to notify the Court immediately if he lacks the consent of the defendants to appear generally on their behalf and submit to the jurisdiction of the Court. The defendants are directed to file an answer or other dispositive motion by no later than November 14, 2005.

IT IS SO ORDERED this 13th day of October, 2005.


Donald E. O'Brien
Donald E. O'Brien, Senior Judge
United States District Court
Northern District of Iowa

**TO: WARDEN/ADMINISTRATOR
Fort Dodge Correctional Facility, Fort Dodge, Iowa**

NOTICE OF COLLECTION OF FILING FEE

You are hereby given notice that Donald Craig, #1091162, an inmate at your facility, filed the following lawsuit in the United States District Court for the Northern District of Iowa: *Craig v. Bretthauer, et al.*, Case No. C05-3038-DEO. The inmate was granted in forma pauperis status pursuant to 28 U.S.C. § 1915(b), which requires partial payments of the \$250.00 filing fee. Based on the prisoner account information, the court has assessed an initial partial filing fee of \$3.99, which the inmate must pay now to the Clerk of Court. 28 U.S.C. § 1915(b)(1).

After payment of the initial partial filing fee, the prisoner shall be required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. The agency having custody of the prisoner shall forward payments from the prisoner's account to the clerk of court each time the amount in the account exceeds \$10 until the filing fees are paid.

28 U.S.C. § 1915(b)(2). If the inmate currently does not have sufficient funds to pay the initial partial filing fee, you must monitor the account and send payments to the Clerk of

Court according to the system provided in 28 U.S.C. § 1915(b)(2).

Please make the appropriate arrangements to have these fees deducted and sent to the court as instructed.

Pridgen J. Watkins
U.S. District Court Clerk
Northern District of Iowa

**NOTICE OF LAWSUIT
and REQUEST FOR
WAIVER OF SERVICE OF SUMMONS**

TO THE NAMED DEFENDANT(S) IN THE FOLLOWING CAPTIONED ACTION:

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CENTRAL DIVISION**

DONALD CRAIG,

Plaintiff,

No. C05-3038-DEO

vs.

RICK BRETHAUER, JERRY BURT,
MARY DICK,

INITIAL REVIEW ORDER

Defendants.

A lawsuit has been commenced against you (or the entity on whose behalf you are addressed). A copy of the complaint and a copy of the corresponding order from this court are attached. This complaint has been filed in the United States District Court for the Northern District of Iowa.

Pursuant to Rule 4 of the Federal Rules of Civil Procedure, you have an obligation to cooperate in saving unnecessary costs of service of summons and complaint. Please sign the enclosed document where appropriate acknowledging receipt of the complaint and notice of this pending lawsuit and waiving formal service of summons. After signing the enclosed document, please return it to the United States Clerk's Office in the envelope provided within thirty (30) days of this date: _____.

I affirm that this notice and request for waiver of service of summons is being sent to you on behalf of the plaintiff, this _____, 2005.

Signature (Clerk's Office Official)
Northern District of Iowa

**ACKNOWLEDGMENT OF RECEIPT OF
NOTICE OF LAWSUIT,
and WAIVER OF SERVICE OF SUMMONS**

(**Return **this** document within thirty days after

to the United States Clerk's
Office in the envelope provided.)

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CENTRAL DIVISION**

DONALD CRAIG,

Plaintiff,

No. C05-3038-DEO

vs.

RICK BRETHAUER, JERRY BURT,
MARY DICK,

INITIAL REVIEW ORDER

Defendants.

I acknowledge receipt of the complaint and notice of the lawsuit in which I (or the entity on whose behalf I am addressed) have been named a defendant. I have received and/or read the complaint accompanying this document.

I agree to save the cost of service of a summons and an additional copy of the complaint by not requiring that I (or the entity on whose behalf I am acting) be served with judicial process in the manner provided by Rule 4 of the Federal Rules of Civil Procedure. I hereby waive service of summons.

I (or the entity on whose behalf I am acting) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for objections based on a defect in the service of summons. I understand that a judgment may be entered against me (or the entity on whose behalf I am acting) if an answer or motion under Rule

12 of the Federal Rules of Civil Procedure is not served within 45 days after _____, (the date Notice, Waiver and corresponding documents were sent).

Date _____ Signature _____
Printed name _____
As _____ of _____
(Title) (Entity)

Date _____ Signature _____
Printed name _____
As _____ of _____
(Title) (Entity)

Date _____ Signature _____
Printed name _____
As _____ of _____
(Title) (Entity)

Date _____ Signature _____
Printed name _____
As _____ of _____
(Title) (Entity)

Date _____ Signature _____
Printed name _____
As _____ of _____
(Title) (Entity)

Date _____ Signature _____
Printed name _____
As _____ of _____
(Title) (Entity)

Date _____ Signature _____
Printed name _____
As _____ of _____
(Title) (Entity)

Date _____ Signature _____
Printed name _____

As _____ of _____
(Title) (Entity)

Address Form
[To Be Completed by Deputy Clerk!]

Case Number: C05-3038-DEO Date: October 13, 2005
To: Clerk of Court
RE: Service on Named Defendants

Below, please find the known (or likely) addresses for the following persons/entities who have been named as defendants to this action:

Defendant: **JERRY BURT**
Warden, Fort Dodge Correctional Facility
1550 L Street
Fort Dodge, IA 50501-5767

Defendant: **RICK BRETHAUER**
Fort Dodge Correctional Facility
1550 L Street
Fort Dodge, IA 50501-5767

Defendant: **MARY DICK**
Fort Dodge Correctional Facility
1550 L Street
Fort Dodge, IA 50501-5767